



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Robert Kelly Kujala

Heard: May 7, 2015, in Vancouver, British Columbia
Reasons for Decision: June 23, 2015

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. H. Benjamin Casson, Q.C.	Chair
Elaine Davison	Industry Representative
Holly Millar	Industry Representative

Appearances:

David Babin)	For the Mutual Fund Dealers Association of
)	Canada
)	
Robert Kelly Kujala)	In Person
)	
)	

1. By Notice of Hearing dated December 18, 2014, (Exhibit “1”) and duly served April 1, 2015 upon Robert Kelly Kujala (the “Respondent”), a mutual fund salesperson and branch manager with PFSL Investments Canada Ltd. (“PFSL”), a Member of the Mutual Fund Dealers Association of Canada (the “MFDA”), was alleged to have violated MFDA Rule 2.1.1 as follows:

Allegation #1:

Between March 10, 2009 and May 2, 2013, the Respondent obtained, maintained, and used to process transactions, 27 Letters of Direction (“LOD”) in respect of eight (8) clients, which were partially completed at the time the clients signed them or were photocopies of blank pre-signed LOD that the Respondent altered, contrary to MFDA Rule 2.1.1 thereby failing to deal fairly, honestly and in good faith with the clients and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

2. On May 6, 2015, the Respondent and Shaun Devlin, Senior Vice-President, Member Regulation – Enforcement, MFDA, signed a Settlement Agreement (Exhibit “3”) which, in Part IV thereof, contained the following agreed facts:

Registration History:

6. Since 1993, the Respondent has been registered in British Columbia as a mutual fund salesperson (now known as a Dealing Representative) and, since 1997 as a branch manager with PFSL Investments Canada Ltd. (“PFSL”), a Member of the MFDA.
7. At all material times, the Respondent conducted business at a PFSL branch located in Coquitlam, British Columbia.

Partially Complete Pre-Signed Letters of Direction

8. At all material times, PFSL’s policies and procedures prohibited its Approved Persons from using pre-signed client forms.

9. On July 31, 2013, PFSL's Field Audit Department conducted a routine on-site audit of the Respondent's Coquitlam branch and found that the Respondent had obtained and used 11 partially complete pre-signed Letters of Direction ("LODs") to process transactions for three clients. As a result, PFSL's Field Audit staff conducted a further review of the Respondent's client files and found 16 additional instances where the Respondent had obtained and used partial complete LODs to process transactions for five clients.
 10. The Respondent states that each time he received a partially complete pre-signed LOD to process a redemption request transaction in an affected client's account, he would contact the clients by telephone to obtain further clarification and instructions regarding the amount to be redeemed from the client's account. The Respondent would then fill in the incomplete portions of the LOD based on his conversation with the client.
 11. Staff's investigation did not reveal any evidence of misappropriation, unauthorized trading, client harm, or client complaints in this matter.
 12. Staff's investigation did not reveal any evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' account been carried out in the proper manner.
 13. The Respondent has no prior disciplinary history with the MFDA. He co-operated with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of the MFDA conducting a full hearing on the merits.
3. On the basis of the facts agreed upon, the Respondent agreed to the following terms of settlement:
- i) The Respondent shall pay a fine in the amount of \$5,000.00 pursuant to s. 24.1.1(b) of MFDA By-law 1, payable in five (5) monthly installments of \$1,000 commencing one month after the Settlement Agreement is accepted by the Hearing Panel;
 - ii) The Respondent shall pay costs in the amount of \$2,500.00 pursuant to s. 24.2 of MFDA By-law No. 1, payable within 30 days of the date the Settlement Agreement is accepted by the Hearing Panel;

- iii) The Respondent shall be prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for a period of three (3) months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1 of By-law No.1;
- iv) If the Respondent fails to comply with the provisions of subparagraphs i) and/or ii), the authority of the Respondent to conduct securities related business while in the employ of or associated with a Member of the MFDA shall be immediately suspended without further notice or order of the Hearing Panel until such time as the Respondent demonstrates to the satisfaction of Staff that he has complied with the provisions of subparagraph i);
- v) The Respondent shall attend in person at the Settlement Hearing; and
- vi) The Respondent shall in the future comply with all MFDA by-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.1.1.

4. In accepting the terms of the Settlement Agreement, the Panel agreed with the Submissions of Staff of the MFDA on the following:

- 1. A Panel should not reject a settlement process unless it will receive the penalty as clearly falling outside a reasonable range of appropriateness.
- 2. The primary goal of securities regulations whether in the context of a settlement hearing or a contested hearing, is protection of the investor, fostering possible confidence in the capital markets and the securities industry.

5. Factors which the Panel reviewed and considered in accepting the proposed penalty were as follows:

- a) The seriousness of the allegations proved against the Respondent.
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the capital markets;
- d) Whether the Respondent recognizes the seriousness of the improper activity;
- e) The harm suffered by investors as a result of the Respondent's activities;
- f) The benefits received by the Respondent as a result of the improper activity;

- g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

Breckenridge (Re), supra, at para. 77 and the decisions cited therein, Staff's Book of Authorities, Tab 8.

6. The Panel also referred to the MFDA Penalty Guidelines which provide as follows:

SPECIFIC FACTORS TO CONSIDER		PENALTY TYPES & RANGES
1. Nature of the circumstances and conduct. 2. Number of individuals affected. 3. Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute.		Member: <ul style="list-style-type: none"> • Fine: Minimum of \$5,000. • Interim order pursuant to s. 24.3 of MFDA By-law No. 1. • Suspension. • Termination in egregious cases.
		Approved Person: <ul style="list-style-type: none"> • Fine: Minimum of \$5,000. • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course). • Suspension. • Permanent prohibition in egregious cases.

7. Enforcement Counsel emphasized the seriousness of the use and possession of Pre-Signed forms and the reasons for their prohibition by the securities industry in general. He cited:

Re: Gary Alan Price, MFDA File No. 200814, as an authority on the dangers posed by pre-signed forms as follows:

Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;

At its worse, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client; and

Pre-signed forms subvert the ability of a Member to properly supervise trading activity.

8. Enforcement Counsel emphasized, however, that the Respondent was not maintaining a stock of pre-signed forms.

9. Factors which the Panel accepted as mitigating the penalty were:

1. The Respondent, who had worked in the securities industry as a mutual fund dealing representative for 22 years and as a branch manager for 18 years, had no record of contravening the requirements of any securities organization.
2. By entering into the Settlement Agreement at an early stage in this proceeding, the Respondent has accepted responsibility for his misconduct and has avoided the costs which would have been incurred by a contested disciplinary hearing.
3. The Respondent co-operated with MFDA Staff throughout the investigations.
4. Of particular significance to the Panel was the fact that the Respondent did not, in any way, benefit financially from his misconduct nor was there any evidence to suggest that he intended to do so.

10. The Panel approved the terms of the Settlement Agreement upon being satisfied that a fine of \$5,000.00, plus a three-month suspension of the Respondent's right to act as a branch manager, or in any supervisory capacity for a Member of the MFDA, would achieve both specific and general deterrence. Also, the penalty reflects the seriousness of the Respondent's

misconduct and will serve the public interest and that of the MFDA in enhancing investor protection by ensuring high standards of conduct in the securities industry.

11. According, the Panel signed the Order of May 7, 2015.

DATED this 23rd day of June, 2015.

“H. Benjamin Casson”

The Hon. H. Benjamin Casson, Q.C.
Chair

“Elaine Davison”

Elaine Davison
Industry Representative

“Holly Millar”

Holly Millar
Industry Representative

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